

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5978 of 1991

Date of decision: 10-11-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAFATLAL V. PARMAR

Versus

WELFARE COMMISSIONER, GUJARAT LABOUR WELFARE BOARD,

Appearance:

MR J. P. Parmar for Petitioner
MR R. J. Oza for Respondent No. 1
MR H. L. Jani for Respondents No. 2 and 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/11/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner prayed for direction to the respondents not to supersede him in the matter of promotion to the post of Labour Welfare Officer and not to promote any junior to him on the said post. Further prayer has been made for quashing and setting aside any order of promotion passed to promote any junior to the petitioner to the post of Labour Welfare Officer and further to direct the respondent No.1 to give seniority to the petitioner on the post of Labour Welfare Officer from the date on which his immediate junior is promoted, with all consequential benefits.

2. In para 3(ii) of the petitioner the petitioner has given out that his junior Mr. M. J. Rajavat was promoted to the post of Labour Welfare Officer under order dated 22-8-1991. Earlier to that order, under order dated 6-5-1991 two other juniors of the petitioner, namely, Mr. B.S. Shah and Mr. D.K. Trivedi were promoted to the post of Labour Welfare Officer. If we go by the prayer made by the petitioner, then the prayer is there for quashing of those orders under which three officers named above were given promotion to the post of Labour Welfare Officer. In this case the interim relief in terms of para 8(c) has been granted. After those three persons , no body else has been promoted. The petitioner, behind the back of those persons who were promoted long back, is seeking relief of quashing and setting aside the order of their promotion, which cannot be permitted by this court. In absence of those persons as party to this petition their promotion cannot be set aside.

3. The next question which falls for consideration of this court is whether supersession of the petitioner was illegal or not. Learned counsel for the petitioner contended that adverse remarks of the year 1989-90 and 1990-91 were communicated to the petitioner, but representations filed by him against those adverse remarks were not decided. The grievance in sum and substance is that while adjudging the petitioner unsuitable for the post of Labour Welfare Officer, those adverse remarks have been taken into consideration. In reply to this special civil application respondent No.1 has admitted the fact that the representation which has been filed by the petitioner against the adverse remarks communicated to him for the aforesaid years were not decided. However, from the reply to the special civil

application it comes out that in addition to those adverse remarks, there were many other adversities in the service record of the petitioner. For the year 1987-88 adverse remarks were communicated under letter dated 14-6-1988. Representation filed by the petitioner against those remarks also came to be rejected and decision thereof was communicated to the petitioner. In addition to this the petitioner was given censure vide order dated 29-9-1989. Warning was given to him vide order dated 7-8-1989. Then again warnings were given vide order dated 11-4-1989 and vide letters dated 17-2-1989 and 5-1-1990. The petitioner was served with charge sheet for not submitting accounts in respect of house building advance availed by him. After holding enquiry, penalty of recovery of interest at the rate of 15% was imposed on the petitioner vide order dated 25th October, 1990. The petitioner has not disputed the aforesaid facts. The case of the petitioner has been considered for promotion and in presence of the aforesaid adversities it cannot be said that his case was not fairly and reasonably considered. Even if it is accepted that representation filed by the petitioner against adverse remarks for the year 1989-90 and 1990-91 were pending, and those adverse remarks were taken into consideration, still after excluding those remarks sufficient adverse materials were there in the service record of the petitioner and on the basis of which it cannot be said that his supersession was illegal or arbitrary.

4. In result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier by this court stands vacated.

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